

APOSTOLOS PALIOMBEIS

IBLA 77-139, 77-140

Decided May 16, 1977

Appeals from separate decisions of California State Office, Bureau of Land Management, denying petitions for reinstatement of noncompetitive oil and gas leases, S 5134 and S 5170.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

2. Oil and Gas Leases: Reinstatement

In petitioning for reinstatement of an oil and gas lease terminated by operation of law for failure to submit the rental payment on or before the anniversary date of the lease, simple inadvertence, or ignorance of the regulations are not justifiable excuses for delay in making the rental payment.

3. Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases: Rentals

Under 30 U.S.C. § 188(c) (1970), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless the rental payment

is tendered at the proper office within 20 days of the due date.

4. Applications and Entries: Generally! ! Applications and Entries:
Filing

It is the responsibility of an applicant and entryman to keep BLM informed of his current address, with specific reference to the serial numbers of all cases affected thereby. Notification to BLM of a change of address with respect to a particular case does not constitute notice with respect to other cases not specifically described in such notification.

APPEARANCES: Apostolos Paliombeis, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Apostolos Paliombeis appeals from separate decisions of the California State Office, Bureau of Land Management, denying his petitions for reinstatement of noncompetitive oil and gas leases S 5134 and S 5170, each of which terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1970), for failure to pay the annual rental due on or before the anniversary date of each lease ! December 1, 1976, for S 5134, and October 1, 1976, for S 5170.

As to lease S 5134, rental payment was mailed December 13, and received by BLM on December 15, 1976. In response to a notice of termination dated December 16, BLM received a communication from appellant that he had not received a notice of payment due on lease S 5170. BLM responded that a rental notice mailed to his address of record had been returned August 30, 1976, as undeliverable by the postal service. In his statement of reasons appellant contends that his change of address notice to BLM in September 1976, relative to lease S 5245 should have been sufficient notice to BLM to note all his lease records.

[1, 2] The pertinent statute and regulations, 30 U.S.C. § 188(c) (1970), and 43 CFR 3108.2-1(c), specify that an oil and gas lease terminated by operation of law for failure to pay the annual rental on time may be reinstated if, among other things, the late payment is either justifiable or not due to a lack of reasonable diligence. "Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2). Mailing the payment after it is due does not meet this requirement.

Lula Mai Martin, 27 IBLA 360 (1976); Bobbie Arnold, 24 IBLA 352 (1976); L. P. Weiner, 21 IBLA 336 (1975).

Appellant must show that his late payment for S 5134 was justifiable to have any possibility for reinstatement. He has offered no explanation of why the reasonable diligence test could not have been met. He states only that his excuse is "oversight." As the BLM decision correctly stated, this reason is not within the realm of "justifiable." Cases involving simple inadvertence or ignorance of the regulations are clearly not covered under the "justifiable" provision of the statute. L. J. Arrieta, 26 IBLA 188 (1976); Louis Samuel, 8 IBLA 268 (1972), aff'd, Maisano v. Morton, Civ. No. 39720, (E.D. Mich., October 12, 1973), and numerous subsequent decisions. BLM correctly denied the petition to reinstate lease S 5134.

[3] A petition for reinstatement may be considered if, and only if, the payment is made or tendered within 20 days of the anniversary date. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c). The payment for lease S 5170 was due on or before October 1, 1976. Appellant has never made a tender of this payment, rather only making inquiry in December 1976 as to the rental notice for this lease. Inasmuch as no payment was tendered within the 20! day period allowed by statute, we are precluded by law from giving favorable treatment to the petition for reinstatement of lease S 5170.

[4] We point out that notices of rental due are merely courtesy notices and are not required by law. It is unfortunate that the appellant did not bring his change of address to the attention of BLM, specifically mentioning the subject lease. But it is the responsibility of the lessee to keep BLM informed of his correct address at all times, and in any change of address notice to refer to the specific serial numbers of all cases affected thereby. Reliance upon receipt of a courtesy notice does not justify failure to pay rental on time. The obligation to pay arises from the terms of the statute. Albert DiGiulio, 26 IBLA 169 (1976); Samuel J. Testagrossa, 25 IBLA 64 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Frederick Fishman
Administrative Judge

